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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,880	12/22/2000	David John Tyrrell	16,496	9383

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KIMBERLY-CLARK WORLDWIDE, INC.  
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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/746,880

Applicant(s)

TYRRELL ET AL.

Examiner

Jamisue A. Webb

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,16-19,30,31,36-39,42,44 and 48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-15,20-29,32-35,40-42,45-47 and 49-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5,6,7
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a. Claims 1-15, 20-35, and 40-56 are drawn to one independent and distinct species
  - i. (1) Claims 6, 28 and 48 are drawn to an independent subspecies of the composition.
    - (2) Claims 12, 32 and 51 are drawn to another independent subspecies of the composition.
  - ii. (1) Claim 42 is drawn to one independent sub-species of Claim 40.
    - (2) Claim 43 is drawn to another independent sub-species of Claim 40.
    - (3) Claim 44 is drawn to another independent sub-species of Claim 40.
- b. Claims 16-18 and 36-38 are drawn to another independent and distinct species
- c. Claims 19 and 39 are drawn to another independent and distinct species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Alyssa Dudkowski on 3/5/02 a provisional election was made without traverse to prosecute the invention of group a and subspecies i.(2) and ii.(2), claims 1-15, and 40-56 further electing claims 12, 32, 51 and 43. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6, 7, 16-19, 30, 31, 36-39, 42, 44, and 48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. (6,149,934) in view of Beerse et al. (6,294,186).

7. With respect to Claim 1, 5, 8, 10, 11, 14, 15, 20, 25, 26, 29, 34, 35, 40, 47, 49, 50, 52 and 53: Krzysik discloses the use of an absorbent article (20) with a topsheet, backsheet and core located there between (See Figure 1). Krzysik discloses the use of a lotioned topsheet to where the lotion composition is melted, applied to the topsheet and then cooled (column 13, line 64 to column 14, line 3). Krzysik disclose the composition comprising 5-95% emollient (see abstract), 0.1-25% of a viscosity enhancer (see abstract), and 5-95% of a wax, which can be a natural oil such as hydrogenated cottonseed oil (abstract and column 10, line 24).

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8. Krzysik, however fails to disclose the composition comprising a sterol and a decoupling agent. Beerse discloses the use of a lotion composition that can be used on diapers (column 9, lines 12-13) is based on an emollient and contains about 0.1-10% of a decoupling polymer such as polysaccharides or polyacrylamides (column 36, line 51 to column 37, line 46), a clay (column 11, line 24), and a skin moisturizer such as the sterol cholesterol and is present from 0.1–20% (column 10, line 43 to column 11, line 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik to include the decoupling agent, clay and the sterol of Beerse, in order to thicken the skin care composition to improve the moisturizing effect of the composition (see Beerse, column 10).

9. With respect to Claims 2, 22, 41, and 55: See Krzysik column 12, lines 42-58.

10. With respect to Claims 3, 27 and 45: See Krzysik column 9, lines 45-50.

11. With respect to Claims 4, 28 and 46: See Krzysik column 10, lines 48-67.

12. With respect to Claim 9: See Krzysik column 10, lines 19-33.

13. With respect to Claims 12, 13, 32, 33 and 51: Krzysik discloses the use of a rheology modifier such as silica (column 10, line 60 and column 11, lines 1-5).

14. With respect to Claims 21 and 54: See Krzysik column 12, lines 29-34.

15. With respect to Claims 23 and 56: See Krzysik column 12, line 66 to column 13 line 2.

16. With respect to Claim 24: See Krzysik column 13, lines 42-55.

17. With respect to Claim 43: See Krzysik column 13, line 59.

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***Conclusion***


18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ptchelintsev (5,951,990) and Dodd et al. (6,344,218) disclose lotion compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw  
March 8, 2002

  
**John G. Weiss**  
**Supervisory Patent Examiner**  
**Group 3700**

**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.